

August 18, 2000

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT**

SUBJECT: Department of Development and Environmental Services File No. **L98P0038**

**RIDGE AT LAKE SAWYER**  
Preliminary Plat Application

Location: Southeast of Southeast 312<sup>th</sup> Street and Sawyerwood Elementary, north of Keevies Lake, on the west side of Lake Sawyer Road Southeast.

Applicant: W. E. Ruth Real Estate, Inc., *represented by*  
**Eric LaBrie**  
Barghausen Consulting Engineers  
18215 – 72<sup>nd</sup> Avenue South  
Kent, WA 98032  
Telephone: (425) 251-6222 Facsimile: (425) 251-8782

Intervenor: Sheldon Hay, *represented by*  
**Joel Haggard**, Attorney at Law  
Suite 1200, IBM Building  
1200 Fifth Avenue  
Seattle, WA 98101  
Telephone: (206) 682-5635 Facsimile: (206) 623-LAND

King County: Department of Development and Environmental Services,  
Land Use Services Division, *represented by*  
**Kim Claussen**  
900 Oakesdale Avenue Southwest  
Renton, WA 98055-1219  
Telephone: (206) 296-7167 Facsimile: (206) 296-6728

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary Recommendation:  
Department's Final Recommendation:

Approve, subject to conditions  
Approve, subject to conditions

Examiner's Decision:

Approve, subject to conditions

**PRELIMINARY MATTERS:**

Application or petition submitted:

October 2, 1998

Complete application:

October 2, 1998

**EXAMINER PROCEEDINGS:**

Hearing Opened:

August 3, 2000

Hearing Closed:

August 15, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES/TOPICS ADDRESSED:**

- Access
- Zoning interpretation
- Clustering
- Open space
- Land locking
- Drainage
- Groundwater recharge

**SUMMARY:**

Grants preliminary approval to a proposal to subdivide 303 acres into 60 single-family residential building lots. The proposal achieves a density of approximately 1 dwelling unit per 5 acres. Proposed lot sizes range from 1 acre to 3 acres with one exception—a proposed 32 acre residential lot.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

**1. General Information.**

Owner/Developer:

W. E. Ruth Corporation  
19222 – 108<sup>th</sup> Avenue SE  
Renton, WA 98055  
(253) 852-4682

Engineer:	Barghausen Consulting Engineers, Inc. 18215 – 72 <sup>nd</sup> Avenue South Kent, WA 98032 (425) 251-6222
Location:	The site is located south of SE 312 <sup>th</sup> Street and Sawyer Wood Elementary, north of Keevies Lake, on the west side of Lake Sawyer.
STR:	9-21-6
Zoning:	RA-5P
Acreage:	303 acres
Number of Lots:	60 lots
Density:	One unit per 5 acres
Typical Lot Size:	Ranges from approximately 1-3 acres in size, with 1 lot, approximately 32 acres
Proposed Use:	Single family detached
Sewage Disposal:	Individual on-site septic
Water Supply:	Covington Water District
Fire District:	King County Fire District No. 44
School District:	Kent School District No. 415
Complete Application Date:	October 2, 1998

2. **Proposal.** Grants preliminary approval to a proposal to subdivide 303 acres into 60 single-family residential building lots. The proposal achieves a density of approximately 1 dwelling unit per 5 acres. Proposed lot sizes range from 1 acre to 3 acres with one exception—a proposed 32 acre residential lot. The Applicant’s proposal is described in greater detail in Exhibit No. 7 (Preliminary Plat drawing) which is also attached to the Department of Development and Environmental Services (“DDES” or “Department”) Preliminary Report to the Hearing Examiner dated August 3, 2000 (Exhibit No. 2) as “Attachment 1.”
3. **State Environmental Policy Act.** On June 20, 2000, the Department issued a threshold determination of non-significance for the proposed development. That is, the Department published its determination that the proposed development would not cause probable significant adverse impacts upon the environment. This determination was based upon the Department’s review of the Applicant’s environmental checklist as well as other relevant environmental documents. No agency, tribe, person or other entity appealed that determination, which is now adopted here together with the environmental documents of record.
4. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat of the Ridge at Lake Sawyer, subject to the 23 conditions of final plat approval stated on pages 7 through 11 of the Department’s Preliminary Report (Exhibit No. 2); subject to these additions and changes:
  - a. **Clustering.** In Recommended Condition No. 4, the Department refines its citation of authority from KCC 21A.14.040 to KCC 21A.14.040.B.2. This provision requires a maximum of 8 lots less than 2.5 acres in a cluster that is served by cul-de-sac.

- b. **Stormwater control.** Noting that the stormwater control facilities for roads in the subdivision are proposed to be designed as infiltration ponds, Recommended Condition No. 9 requires that these facilities be designed according to the 1998 Surface Water Design Manual (KCSWDM). In its final recommendation (Exhibit No. 10) the Department adds a requirement that specifies compliance with provisions of the 100-year pond overflow conveyance as established by KCSWDM Section 5.4.
- c. **Principal internal access street development standard.** The principal internal access/circulation spine of the proposed development is labeled “Road A” in the Preliminary Plat drawing (Exhibit No. 7). In its initial recommendation the Department sought to establish Road A as a rural neighborhood collector. In its final recommendation (Exhibit No. 10) the Department changes the Road A improvement standard to “rural **sub**collector” standard. See Condition No. 11.a., as stated on page 13 of this Report and Decision.
- d. **Southwardly extending stub street.** The proposed Preliminary Plat drawing (Exhibit No. 7) shows a stub street extending southward, connecting the internal access/circulation spine street Road A to the south boundary of the subject property—thereby anticipating connection to future development to the south. Having heard the Applicant’s arguments regarding why this southerly extension should be regarded as unnecessary, the Department agrees to eliminate that requirement. This change in recommendation results in modifications to four recommended conditions of final plat approval:
  - Condition No. 11.b, which requires a rural subaccess street standard for Road E, would be eliminated.
  - Second, Condition No. 11.c would be amended to include Road E as a rural minor access street (the same as proposed Roads B, C and D).
  - Third, Condition No. 11.e, which requires temporary cul-de-sac turnarounds, is consequently amended to delete any reference to the southwardly extending Road E.
  - And finally, Condition No. 18, which requires joint undivided ownership of private roads, is amended to add (include) proposed Road E.
5. **Applicant’s Response.** The Applicant accepts the Department’s final recommendation as described in Finding No. 4, preceding, *except* that the Applicant opposes the Department’s recommendation to designate the proposed 32 acre Lot No. 39 as *open space*. This issue is discussed further in Finding No. 6, following.
6. **Proposed Lot No. 39.** Proposed Lot No. 39 comprises 32 acres, bounded, for the most part, by Class 1 Wetlands (Proposed Tracts I and J), with access to Proposed Road A to be obtained in the northern portion of the property (between Tracts I and H). The Department recommends that proposed Lot No. 39 be designated *permanent open space*, a recommendation that the Applicant opposes. The following findings are relevant:

- a. The disagreement initially appears to concern whether the proposed development as described by the Preliminary Plat drawing (Exhibit No. 7) constitutes *lot clustering*. The Department says it does. The Applicant says it doesn't. Both parties refer to KCC 21A.14.040.B which states that "when residential lot clustering is proposed" the following provisions shall be met:

Any open space resulting from lot clustering shall not be altered or disturbed except as specified on the recorded documents creating the open space. Such open spaces may be retained under ownership of the subdivider, conveyed to residents of the development or conveyed to a third party. When access to the open space is provided, the access shall be located in a separate tract.

In the RA zone:

1. No more than 8 lots of less than 2.5 acres shall be allowed in a cluster;
  2. No more than 8 lots of less than 2.5 acres shall be served by a single cul-de-sac street;
  3. Clusters containing 2 or more lots of less than 2.5 acres, whether in the same or adjacent developments shall be separated from similar clusters by at least 120 feet, and;
  4. The overall amount, and the individual degree of clustering shall be limited to a level that can be adequately served by rural facilities and services, including, but not limited to on-site sewage disposal systems and rural roadways....
- b. KCC Title 21A contains no definition of "cluster" or "clustering." KCC 21A.14 contains no clearly stated criteria or standards by which to determine when clustering does or does not exist.
- c. KCC 21A.12.030.A grants developments in the RA-5 zone, a base density of 0.2 dwelling units per acre.<sup>1</sup> With a calculated site area of 300 units, then, the subject property is entitled 60 dwelling units—the same amount the Applicant proposes.
- d. KCC 21A.12.030.A establishes density and lot width standards for each lot in the RA-5 classification. The proposed development complies with these standards. KCC 21A.12.030.A provides no minimum *lot size* standard. Thus, the Applicant argues, the code is "density driven", not "lot size" driven.
- e. Earlier this year, in the case of Chateaus at Greenbrier (DDES File No. L98P0023), the Council approved an accompanying zoning reclassification from RA-10 to RA-5 precisely for the purpose of accommodating a "clustered" development of 88 acres, dividing that parcel into 13 single-family residential building lots and one 73-acre

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<sup>1</sup> It also provides for a "maximum density" of 0.4 dwelling units per acre. However, to achieve that density (twice the amount of the base density) a development parcel must be "designated as rural receiving area" through the transfer of density pilot program outlined in KCC 21A.55. See also KCC 21A.12.030.B.20.

remainder (residential) lot. In an appeal before the Council, regarding the reclassification of the Chateaus at Greenbrier property from RA-10 to RA-5, the Council approved the reclassification with a condition specifically addressing the disposition of the 73-acre remainder lot. In that case, the Council authorized the lot as a building lot limited to only one single-family residence until another reclassification, redrawn rural boundary or annexation occurs.<sup>2</sup> Shortly thereafter, Chateaus at Greenbrier (DDES File No. L98P0023) was approved incorporating that Council decision.

In spite of our lack of operative definition of “clustering,” it would be reasonable to guess that the Chateaus at Greenbrier was a true clustered development—with 13 one-acre lots clustered in the northwest corner of a RA-5 classified 88-acre property. Regardless of what KCC 21A.14.040.B may or may not say, whatever ambiguity it may contain, the Council found appropriate to approve the 73-acre remainder lot with the limitations described above. DDES and the Council agreed that it need not be set aside as open space.

- f. In the instant case, the Applicant agrees to three conditions of final plat approval *if* the Examiner and Council recognize the proposed 39-acre lot as a *single-family residential building lot* (not as open space).
- Eastward extension of a wildlife tract along the north boundary of the Ridge at Lake Sawyer property. (This corridor already exists along the western portion of the north boundary, but would be extended eastward along the north boundary of proposed Lot No. 39 also.)
  - Field survey of wetland/buffer/sensitive areas tracts abutting proposed Lot No. 39. (Presently, those boundaries are established only “on paper” based upon aerial photography interpretation.)
  - A prohibition of further subdivision unless the property is reclassified.

The Department has suggested that these three conditions are necessary if the property is not designated as open space. The third condition, prohibition of further subdivision until/unless further reclassification, is similar to the condition placed by the Council on Chateaus at Greenbrier.

7. **Aquifer Concerns.** Barbara Rush, President, Horseshoe Lake Homeowners’ Association, expresses concern that infiltration of peak stormwaters, will result in flooding of Horseshoe Lake. Except, possibly, in the most severe 100-year storm, all stormwater runoff from impervious surfaces created by this development will be infiltrated. The geology of this area of King County is distinctively higher in infiltration capacity than most of King County.

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<sup>2</sup> Interestingly, DDES first drafted, proposed and supported this condition, thereby advocating a position contrary to its current Ridge at Lake Sawyer recommendation.

Nearby Horseshoe Lake is fed solely by underground aquifer. Citing the Herrera report (Exhibit No. 17) Ms. Rush expresses concern that peak period infiltration increases within the subject property will result in infiltrated water transmigration to Horseshoe Lake via underground aquifer, thereby flooding Horseshoe Lake. As a result of these concerns, the Department's review engineer re-examined the groundwater recharge boundary map provided by Ms. Rush (Exhibit No. 27.b) as well as the Horseshoe Lake Analysis by Herrera (Exhibit No.17) and the Geotechnical Report by D. R. Strong (Exhibit Nos. 19.a and 19.b). The Department concludes that none of these maps or analyses indicate that the subject property is located within the Horseshoe Lake recharge area boundaries.

8. **Sheldon Hay, et al Request for Access.** An informal *ad hoc* coalition of property owners located west of the subject property, led by Sheldon Hay, asks for a revision to the proposed plat that would assure access to their respective properties. Five of these properties comprise approximately 20 acres each; one, Meiers, comprises approximately 40 acres. Mr. Hay's two lots comprise 7.9 acres and 10.10 acres. See "Map 1" of Exhibit No. 12. Mr. Hay, as well as Mr. Hay's neighbors, state that they are land locked and must obtain access through the subject (Ridge at Lake Sawyer) property if they are to use their respective properties. The Department and the Applicant oppose the Hay, et al request. The following findings are relevant:
- a. A narrow, winding gravel/rock road crosses the northern portion of the subject property, extending westward to the Meiers property. It extends further westward, apparently, to the most eastern of the two Hay properties. Mr. Hay obtains access to that property (Tax Lot No. 14) via this route. No tract or easement establishes this route. Apparently it is the remnant of an old logging road. No claim for adverse possession or prescriptive rights has ever been adjudicated. Although Mr. Hay testifies to having periodically used this road, it is unclear how many of these property owners have used it or presently use it. According to Mr. Hay's testimony, most of the property owners are elderly, live elsewhere, and do not frequent the area. In fact, he doubts that one of them has ever seen these properties. The hearing record contains letters of support for the request effort led by Mr. Hay.<sup>3</sup>
  - b. The gravel/rock road crosses Class 1 Wetlands. Thus, the Hay, et al request constitutes a petition for exemption from KCC 21A.24 Sensitive Areas Regulations. No petition or application for variance, exemption or reasonable use exception from those regulations has been filed by any person. According to the King County Wetland Rating criteria, a Class 1 wetland represents the highest order of wetland classification. KCC 21A.06.1415 identifies Class 1 Wetlands as those wetlands assigned the "unique/outstanding #1 rating" in the King County Wetlands Inventory, or which meet any of the following criteria:
    - The presence of a species listed by the Federal or State Government as endangered or threatened; or, presence of an outstanding actual habitat for such species;

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<sup>3</sup> See Exhibit No. 24, letters from J. E. Swanson, Leonard Sawyer and Dorothy O'Brien; Exhibit No. 25, letter from E. C. Meiers and Lynn W. Meiers; and, testimony of William Nelson.

- Wetlands having 40 to 60% permanent open water in dispersed patches with two or more classes of vegetation;
- Ten acres or more of wetland area having three or more classes of vegetation, one of which is submerged vegetation in permanent open water; or
- Plant associations of infrequent occurrence.

Placing a particularly high emphasis on Class 1 Wetland preservation, KCC 21A.24.320 requires a protective 100-foot wide buffer around a Class 1 Wetland—a condition that the Department recommends imposing upon the Ridge at Lake Sawyer. The Applicant does not object. Thus, the access route sought by Hay, *et al* extends across approximately 450 feet of Class 1 Wetland and buffer.

- c. Tract J, the largest and most western of the wetland tracts located on the Ridge at Lake Sawyer property extends from the north boundary to the south boundary. Thus, the Tract J Class 1 Wetland will “land lock” a portion of the Ridge at Lake Sawyer property—that portion lying along the western-most boundary. This area, extending along the entire 2,647-foot long west boundary, varies in width from approximately 40 feet to approximately 275 feet. The Applicant has sought neither a variance nor reasonable use exception to obtain access to that isolated portion of the subject property.
- d. Mr. Hay expresses concern, in particular, regarding access to the most eastern of his two parcels. Like the O’Brien, Swanson and Clifford properties, the Hay property is divided by Covington Creek which forms an erratic north/south boundary dividing the two Hay properties. Among these property owners affected by Covington Creek, only Mr. Hay has sought (and successfully obtained) the establishment of Covington Creek as a lot boundary (thereby dividing his approximately 20 acre ownership into 2 parcels). It is the easternmost of these two parcels for which Mr. Hay is most concerned. He testifies that he once sought a shoreline management *substantial development permit* to construct a bridge across Covington Creek in order to obtain access to that property (Tax Lot No. 14). However, Mr. Hay abandoned that effort due to his estimation of probable costs, including design, permitting and construction. See also Finding 8.e, following. In 1994, regarding the above-mentioned substantial development permit application, Mr. Hay submitted a letter from Old Republic Title, Ltd. (Exhibit No. 32) stating the following:

It is our opinion that Mr. Hay has access to the subject property from SE 304<sup>th</sup> Street via easement right-of-ways (*sic*) over roads set forth on the face of short plat numbers 675097, 1177032R, 1177033R, 1177034R and 1177035R.

Each of these short plats show the subject roads on the drawing as access and utilities easements or as just easements, in addition each contains a dedication or binding agreement to dedicate said road to the County for street purposes.

It is also our belief that by reason of the above, continuous use over the last 14 years and that said easements are described in the various short plats as local

access roads or streets, that said right-of-ways (*sic*) are at the least quasi-public



roads.

The network of easement rights-of-way among various short plats are located west of the Hay properties. Mr. Hay does not deny that he has indicated reliance upon the westward easement right-of-way route to obtain access. However, he observes that this network of easement rights-of-way does not provide access to his eastern parcel (separated from his western parcel by Covington Creek); and, that it does not serve Meiers, Clifford, Swanson or Sawyer.

- e. Some of the similarly situated neighboring property owners have supported the Hay request. See Exhibit Nos. 24 and 25; and, testimony of William Nelson. However, this aggregation of property owners having obviously common interest (in order to achieve the full development potential of their respective properties) has never organized legally or financially in order to obtain or develop access pursuant to County standard. The Applicant cites Luxembourg Group v. Snohomish County, 76 Wa.App. 502 (1995). Hay distinguishes the instant case from Luxembourg and cites, in addition, the following: RCW 58.17.110; KCC 19A.01.010.F; King County Comprehensive Plan Policies H-507, T-104, I-101 and U-404; Helberg v. Coffin Sheep Company, 66 Wa.2<sup>nd</sup> 664, 666-667 (1965); Yarrow First Associates v. Town of Clyde Hill, 66 Wa.2<sup>nd</sup> 371 (1965); Brown v. Voss, 105 Wa.2<sup>nd</sup> 366 (1986).
9. Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated August 3, 2000 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the Examiner's report which are submitted to the King County Council.
10. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.

#### CONCLUSIONS:

1. Helberg v. Coffin Sheep Company concerns a lessor/lessee relationship not relevant to this review. It further concerns properties which have shared unity of title, thereby imposing an obligation to provide an easement upon the vendor or lessor ("implied easement"). Again, these are circumstances not relevant to this review. Again, in Yarrow First Associates v. Town of Clyde Hill, the Court dealt with taking away a legally established public right-of-way, a public street right-of-way vacation. No such formal rights have been established here. Brown v. Voss, like Helberg, deals with landlord/tenant relations not relevant to this review.
2. In Luxembourg Group v. Snohomish County, the Court again reiterated the "essential nexus" principal; a legitimate state interest must be advanced and the exaction of property sought in that state interest must address some problem arising from the development under consideration. In the instant case, no such nexus arises. Hay argues that the proposed development stops continued use of an "existing road". However, the evidence provides no grounds for finding that road to be any more than an avenue of illegal trespass across Ridge at Lake Sawyer property. Nor do the

facts support a finding perpetuating that trespass across a Class 1 (“unique/outstanding”) Wetland would advance the state interest. Further, the Luxembourg decision declares, in part, that:

Analysis of whether way of access is ‘necessary’ for purposes of private condemnation action has no bearing on whether dedication of way of access is made necessary as result of prospective subdivision for purposes of determining whether requirement that subdivision owner provide way of access to other property constitutes a taking.

Thus, even if the “easement of necessity” argument is wholly proven—which, by the way, has not occurred in this case—the exaction cannot be required if there is no takings analysis “nexus.”

3. Is there an existing Hay *et al* interest in the old road across Ridge at Lake Sawyer property? Not in this hearing record. There are no easements; no showing of necessity (See Finding No. 8.d); and no adjudicated rights.
4. Hay *et al*, through counsel, cites several King County Comprehensive Plan policies as supporting the access sought.
  - H-507 recommends an exploration of incentives to preserve and improve existing housing.
  - T-104 recommends identifying improvements and strategies to “meet the level of service requirements for transportation”. It discusses the Transportation Needs Report (TNR) and transit planning.
  - I-101A (there is no I-101) requires balancing of public policy goals of the Comprehensive Plan.
  - The preface to U-404 notes King County’s limited financial resources. U-404 then directs King County’s first priority to be investment, *inter alia*, in “existing and pipeline transportation needs.”

None of these policies bear directly on the instant case. The route at issue is not identified in the TNR and is not a County-identified designated “need”.

5. For the reasons indicated in Finding No. 8, above, and Conclusion Nos. 1 through 4, preceding, the proposed plat of Ridge at Lake Sawyer will be approved as proposed by Applicant W. E. Ruth and as recommended by the Department of Development and Environmental Services, sans private easement or tract benefiting Hay *et al*.
6. The King County Zoning Code provides no definition or criteria by which to determine when a “cluster” of lots exists or is proposed in a rural zone. An interpretation of KCC 21A.14.040.B may be stretched to suggest that a lot comprising less than 2.5 acres is a “cluster” lot, yet it doesn’t really clearly say that. In the absence of such a clear distinction the precedent of Chateaus at Greenbrier must be given particular weight. There certainly are no facts in this hearing record which distinguish this case from Chateaus at Greenbrier. Likewise, the lack of

such a clear distinction supports the Applicant's argument that the RA zone is "density driven" not "lot-size driven." As noted in the findings above, the Applicant in this case seeks no density incentive approval and meets the density standards of the RA-5 classification.

Previous decisions by Examiners or the Council do not establish precedence in the same way as case law. Nonetheless, the courts expect those decisions to be consistent. Approving the Applicant's remainder Lot No. 39 (comprising 32 acres) as proposed—that is, as a single-family residential building lot, rather than as "open space"—will be consistent with the Council's decision on Chateaus at Greenbrier (DDES File Nos. L98RZ006 and L98P0023). See Finding No. 6.e.

For these reasons, Lot No. 39 will be approved as proposed. The reasonable and appropriate conditions suggested by the Department (Finding No. 6.f) and accepted by the Applicant, are necessary in the public interest and are consistent with the King County Comprehensive Plan.

7. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
8. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
9. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
10. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.
11. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.

#### DECISION:

The proposed plat of Ridge at Lake Sawyer is APPROVED, subject to the following conditions:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication, which includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the base density requirements of the RA-5 zone classification. All lots shall meet the minimum dimensional requirements of the RA-5 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The plat/lot layout for lots served by Roads B and D shall be revised to comply with the provisions of KCC 21A.14.040.B.2 (i.e. maximum of eight lots less than 2.5 acres in a cluster served by a cul-de-sac).
5. The applicant must obtain final approval from the King County Health Department. Note, a portion of the lots will require wet winter review. This may result in the reconfiguration and/or loss of lots.
6. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
7. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

8. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain

outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

9. The stormwater control facilities for the roads in this subdivision are proposed to be designed as infiltration ponds. These facilities shall be designed according to the 1998 King County Surface Water Design Manual (KCSWDM). The provisions for the 100-year pond overflow conveyance shall be met according to KCSWDM Section 5.4.

A drainage adjustment (File No. L00V0022) was approved for this site allowing minor diversion of onsite stormwater. All conditions of approval for this adjustment shall be met, incorporated into the drainage design and shown on the engineering plans.

10. Individual lot stormwater infiltration/detention is proposed for the lots within this development. A proposed typical design of the infiltration/detention design shall be shown on the engineering plans at submittal.

The individual lot infiltration/detention systems shall be designed and constructed with the residential building permits. The systems shall be constructed according to the 1998 KCSWDM. The following note shall be placed on the final plat: "Individual lot stormwater infiltration/detention systems for the lots shall be designed and located at building permit submittal."

11. The following road improvements are required for this subdivision and shall be constructed according to the 1993 King County Road Standards:

- a. Road A shall be improved to a rural subcollector standard except for SE 312<sup>th</sup> St./Road A west of Lake Sawyer Road SE (228<sup>th</sup> Ave. SE) shall be improved to neighborhood collector street standards between Lake Sawyer Road SE and the west of the Sawyer Woods Elementary School access or as approved by DDES, KCDOT Traffic & Engineering and the Kent School District. The school driveways and parking lot must be reconstructed to provide access from SE 312<sup>th</sup> St. as determined acceptable by the School District and King County.
- b. Roads B, C, D and E shall be improved to the rural minor access street standard. These roads are to be private unless otherwise approved by D.D.E.S.
- c. Tracts N, O, and P shall be improved as joint use driveways according to Section 3.01 of the King County Road Standards.
- d. A temporary turnaround bulb shall be provided at the north terminus of Road A.

- e. Modifications to the above road conditions may be considered pursuant to the variance procedures in Section 1.08 of the King County Road Standards.
12. A southbound right turn lane shall be constructed on Lake Sawyer Road SE at the intersection of SE 312<sup>th</sup> St./ Lake Sawyer Road SE (228<sup>th</sup> Ave. SE). The design must meet King County and/or the City of Black Diamond design standards.
13. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
14. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
15. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
16. There shall be no direct vehicular access to or from Maple Valley-Lake Sawyer Road SE (AKA 228<sup>th</sup> Ave. SE) from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
17. Off-site access to the subdivision shall be over a full-width, dedicated and improved road which has been accepted by King County for maintenance. If the proposed access road has not been accepted by King County at the time of recording, then said road shall be fully bonded by the applicant of this subdivision.
18. Lots served by private roads (Roads B, C, D and E) shall have undivided ownership of the road and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat. Lots served by joint use driveways shall have undivided ownership of the tract(s) and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat.
19. The proposed subdivision shall comply with the Sensitive Areas Code as contained in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

20. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

### **Wetlands**

- a. Class 1 wetland(s) shall have a minimum buffer of 100 feet, measured from the wetland edge.
- b. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- c. Class 3 wetland(s) shall have a minimum buffer of 25 feet, measured from the wetland edge.
- d. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- f. A minimum building setback line of 15 feet shall be required from the edge of the tract.

### **Geotechnical**

- g. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by DDES geologist, prior to engineering plan approval.
  - h. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
21. The following note shall be shown on the final engineering plan and recorded plat:

#### **RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

22. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
23. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
  - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
  - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
  - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
  - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if the road(s) are on a bus route. If so, the street tree plan shall also be reviewed by Metro.
  - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the



trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

24. The north boundary of the site is located within the wildlife habitat network as adopted by the 1994 King County Comprehensive Plan. The wildlife habitat corridor shall be placed in a contiguous open space tract, minimum 75 feet in width (with the exception of drainage tracts, road crossings) from the east boundary and extend to the westerly Class 1 Wetland. A note to this effect shall be shown on the engineering plans and final plat.

ORDERED this 18<sup>th</sup> day of August, 2000.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 18<sup>th</sup> day of August, 2000, to the following parties and interested persons:

Roger Dorstad  
Evergreen East Realty  
16651 NE 79th Street  
Redmond WA 98052

Eaton Residence  
23232 SE 312th St  
Black Diamond WA 98010  
Seattle WA 98101

Joel Haggard  
Suite 1200, IBM Bldg  
1200 Fifth Ave

Sheldon Hay  
29620 - 235th Avenue SE  
Black Diamond WA 98010

Tari Jensen  
18902 SE 258th St  
Covington WA 98042  
Bellevue WA 98007

King County Envir Health Division  
Eastgate Public Health Center  
14350 SE Eastgate Way

William Kombol  
Palmer Coking Coal  
P O Box 10, 31407 Hwy. 169  
Black Diamond WA 98010

Eric LaBrie  
Barghausen Engineering  
18215 - 72nd Avenue South  
Kent WA 98032

Linda Matlock  
WA State Dept Ecology WQSW Unit  
PO Box 47696  
Olympia WA 98504-7696

Eleanor Moon  
King County Executive Horse Council  
12230 NE 61st  
Kirkland WA 98033

William F. Nelson  
1704 - 158th Ave  
Lakebay WA 98349  
Seattle WA 98104

Don Nettleton  
Plum Creek Timber Company  
999 Third Avenue #2300

Dorothy O'Brien  
6802 Seward Park Ave S  
Seattle WA 98118

Barbara Rush  
32626 - 224th PI SE  
Black Diamond WA 98010

Gabriella Uhlar-Heffner  
32105 - 199th Ave SE  
Kent WA 98042

W. E. Ruth Corporation  
19222 - 108th Ave S  
Renton WA 98055

Benayshe Yee  
606 N 65th St  
Seattle WA 98103

Greg Borba  
DDES/LUSD  
MS OAK-DE-0100

Kim Claussen  
DDES/LUSD  
Current Planning  
MS OAK-DE-0100

Nick Gillen  
DDES/LUSD  
Site Development Services  
MS OAK-DE-0100

Kristen Langley  
KC Transportation Department  
Traffic and Planning Section  
MS KSC-TR-0222

Aileen McManus  
KCDOT  
Roads Division  
MS-KSC-TR-0222

Carol Rogers  
DDES/LUSD  
MS OAK-DE-0100  
MS OAK-DE-0100

Steven C. Townsend  
DDES/LUSD  
Land Use Inspection

Larry West  
DDES/LUSD  
Site Development Services  
MS OAK-DE-0100

Bruce Whittaker  
DDES/LUSD  
Engineering Review  
MS OAK-DE-0100

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before September 1, 2000***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before September 8, 2000***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

#### MINUTES OF THE AUGUST 3, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L98P0038 – RIDGE AT LAKE SAWYER:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Kim Claussen and Bruce Whittaker. Participating in the hearing and representing the Applicant were Tom Barghausen and Eric LaBrie of Barghausen Consulting Engineers, Inc. Participating in this hearing as an Intervenor was Sheldon Hay. Other participants in this hearing were William F. Nelson and Barbara Rush.

#### **The following exhibits were offered and entered into the record:**

- |                |  |
|----------------|--|
| Exhibit No. 1  | DDES File No. L98P0038   |
| Exhibit No. 2  | DDES Preliminary Report to the Hearing Examiner, dated August 3, 2000  |
| Exhibit No. 3  | Application, dated October 2, 1998   |
| Exhibit No. 4  | Environmental Checklist, dated October 2, 1998   |
| Exhibit No. 5  | Declaration of Non-significance, dated Jun 20, 2000  |
| Exhibit No. 6  | Affidavit of Posting indicating November 11, 1998 as date of posting and November 13, 1998 as the date the affidavit was received by DDES. |
| Exhibit No. 7  | Plat Map, dated June 2, 2000 and Conceptual Drainage Plan  |
| Exhibit No. 8  | Land Use Map E/W 17-21-6; E/W 18-21-6; E/W 8-21-6; E/W 9-21-6  |
| Exhibit No. 9  | Assessors Maps Sec. & SW 8-21-6 (annotated in pink highlighter by Intervenor Hay); Sec. & NE 9-21-6; NW/SW 10-21-6; Sec. & NE 16-21-6.     |
| Exhibit No. 10 | Revised recommendations 4, 9 & 11.a.   |

Exhibit No. 11	Nelson letter, received date July 25, 2000
Exhibit No. 12	Hay letter, dated July 18, 2000
Exhibit No. 13	O'Brien letter, dated July 23, 2000
Exhibit No. 14	City of Black Diamond letter, dated July 11, 2000
Exhibit No. 15	Palmer Coking Coal letter, dated June 27, 2000
Exhibit No. 16	Kent School District letter, dated April 12, 1999
Exhibit No. 17	Horseshoe Lake analysis by Herrera—7/29, 9/18, 9/30/96.
Exhibit No. 18a.	Level I Drainage Analysis by Barghausen Consulting Engineers, dated May 18, 1998
Exhibit No. 18b.	Level I Drainage Analysis by Barghausen Consulting Engineers, dated September 10, 1999 (revised)
Exhibit No. 19a.	Geotech report by D. R. Strong, received date September 27, 1999
Exhibit No. 19b.	Geotech report by D. R. Strong, dated January 12, 2000 (revised)
Exhibit No. 20a.	Wetland study by Terra, dated September 30, 1998
Exhibit No. 20b.	Wetland study by Terra, dated September 27, 1999
Exhibit No. 20c.	Wetland study by Terra, dated February 22, 2000
Exhibit No. 20d.	Wetland study by Terra, dated July 28, 2000
Exhibit No. 21	Traffic study by David I. Hamlin, dated March 1999
Exhibit No. 22	Drainage adjustment (File No. L00V0022)
Exhibit No. 23	Road Variance (File No. L99V0338)
Exhibit No. 24	Letters from Swanson (7/26/00), Sawyer (7/28/00) and O'Brien (7/24/00) to the Examiner
Exhibit No. 25	Faxed letter to Ms. Claussen from E. C. & Lynn Meiers, date/time stamped 8/02/00 @ 4:04 p.m.
Exhibit No. 26	Access points map, annotated by Mr. LaBrie
Exhibit No. 27a.	Letter from Jim Kramer, DNR to Rick Luther, City of Black Diamond, dated 12/03/96
Exhibit No. 27b.	Groundwater recharge boundary map
Exhibit No. 28	Map submitted by Mr. Hay
Exhibit No. 29a.	Ten photographs of road access, submitted by Mr. Hay
Exhibit No. 29b.	Mapped index to photographs in Exhibit No. 29a.
Exhibit No. 30	Examiner's Report and Decision on File No. L97P0029 (from website)
Exhibit No. 31	Examiner's Report and Decision on File No. L98P0022 (from website)
Exhibit No. 32	Letter from Old Republic Title Company regarding Mr. Hay's property access, dated 7/27/94
Exhibit No. 33	Lot line map L99L0002
Exhibit No. 34	Assessor's Map (annotated by Applicant representative), 8-21-6 and Easement letter
Exhibit No. 35	Letter to Mark Carey from Sheldon Hay, dated May 1, 1996
Exhibit No. 36	Wildlife corridor condition No. 24

**The following exhibits were entered pursuant to administrative continuance on August 15, 2000:**

Exhibit No. 37	Letter from Kim Claussen to Examiner Titus, dated August 14, 2000
Exhibit No. 38	Letter from Attorney Joel Haggard to Examiner Titus, dated August 9, 2000
Exhibit No. 39	Letter from Eric LaBrie of Barghausen Engineering to Examiner Titus, dated August 15, 2000

